

## Specific Comments about Points in the Petition

The following comments relate to specific statements in the petition or to a group of related statements. This is not intended as an exhaustive point by point commentary on the petition, but rather as some of the points of disagreement and the major reasons I am declining to grant the relief asked for in the petition.

- Page 6, second paragraph: “. . .many national forests, including the SFNF, have constructed and reconstructed trails to accommodate the larger vehicles, thereby placating the motorized recreation industry to the detriment of our forest heritage”. This statement is without factual basis. The SFNF has not constructed or reconstructed any trails for motorized use since the regulation change in 1988 cited in the petition.
- There are a number of places in the petition where a particular trail proposed in the Proposed Action is cited as a part of the Proposed Action, but not included in the SFNF minimum road system. The reason is that the requirement in the Travel Analysis Process to define a minimum road system does not require definition of a minimum trail system.
- The petition focuses on the fact that the Proposed Action proposes motorized trails in an area shown as “Circle A” areas on the Forest recreation map. The area referenced is designated in the Forest Plan as an area where motorized use off roads and trails is allowed only in narrow corridors. However, the Travel Management designation process and decision may amend the Forest Plan in several ways. The reasons for designating areas for no motorized use off existing roads in the Forest Plan will be assessed and, if a particular route is appropriate from a resource and use standpoint, it may be designated. Conversely, if the original reason for not permitting motorized use off roads is still appropriate, new motorized trails may not be designated.
- Page 5-6 (beginning with last sentence on p. 5): “By 2006 the Jemez Ranger District alone had ordered twenty-five road and off-road closures and restrictions, including six in this Protection Order area. The problem has never been lack of adequate planning or willingness to issue orders. The problem is. . .a lack of institutional will to enforce needed restrictions and closures to protect ecological values.” The following is a description of each of the six orders mentioned and our experience with enforcement on each one. As the evidence shows, there is no lack of institutional will to enforce the restrictions. While the results have not succeeded in accomplishing perfect compliance, we have focused our enforcement efforts where the problems exist and appreciate information from the public about where violations are occurring.

<u>Order #</u>	<u>Name</u>	<u>Date</u>	<u>Remarks</u>
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10-147            Los Utes Rd #288            11/5/92            year-round, no motor vehicles except snowmobiles and wheeled/tracked vehicle <40"

**The closure is only for a part of the road where the topography narrows into a steep-walled canyon. There have been few problems with this closure as the gate is strategically placed in a location difficult to get to. Last year, however, the gate was damaged, and it took a long while to repair it.**

145                Obsidian Ridge Road #287            9/8/92            year-round, no motor vehicles on or off #287 and Trail 114

**There is a large locked gate that enforces the closure. There have not been many problems here. Every hunting season, this gate is opened for a couple weeks upon request from the New Mexico Department of Game and Fish (NMDGF).**

10-156            FRs 144,376,10,268,289,378,269            1/10/94            12/15-5/15, no motor vehicles except snowmobiles

**Winter closures on these roads are generally enforced. The closure dates being enforced are 12/31 (because of X-mas tree sales) to 4/15 (because of requests from the NMGF to open the gates for turkey hunting)**

10-128            Medio Dia Canyon Trail            11/15/90            year-round, no motor vehicles on trail #424

**This closure has been enforced to the best of our ability. Motorized vehicle trespass occurs here pretty regularly, and the gates are often vandalized or torn out. We regularly work with volunteers to monitor the condition of the gates here and have been more successful at keeping this area closed over the past two years.**

10-102            Cochiti Canyon Road            12/1/88            12/1-3/15, no motor vehicles on portion of FR 89

**Winter closure enforcement for this road has followed winter closures on the other roads: 12/31 - 4/15. ATV trespass during the closure has been a problem in recent years.**

10-68            Peralta Ridge Elect. Site Rd 281            9/9/84            year-round, no motor vehicles.

**There is a closed and locked gate on this road, but motorcycles and ATVs have been going around it for years. There are regular efforts to pull out the gate, and the gate is vandalized and then repaired often. Several user-created trails have been proposed during the travel management process, showing this road is used as a key connector route. There has been no documented vandalism to the electronic site, which is the purpose of the closure.**

- The description and associated pictures of erosion damage on pages 7, 9, 10, 11 and 13 do not represent a balanced picture of the trail conditions or of the cause of the erosion. Many of the trails pictured are not proposed for designation

according to the SFNF Travel Management proposed action. For the few that are, Forest Service employees have walked all of these trails and can attest that most of the trail distance is in acceptable condition and the trail can be brought up to acceptable condition with basic trail maintenance. The description, repeated several times, that “wheeled off-road vehicles are causing severe erosion and significant loss of site productivity” is not an accurate portrayal of the situation. All these trails and roads are used by pedestrians, equestrians, mountain bikers, motorcycles; many are also used by ATVs. The damage is a result of inadequate maintenance to control water flow and is associated with use by all user classes.

- Per preamble to Travel Management Final Rule, p. 68280, middle column, “...this final rule, which require(s) the responsible official to close a road, trail, or area immediately when motor vehicle use on that route or in that area is causing considerable adverse effects. However, the Department is adding “directly” before “causing” and “cause” in §212.52 (b)(2) of the final rule to clarify that the motor vehicle use must directly cause a considerable adverse effect to be subject to this section.” Because the trails are used by all classes of users, it is not correct to attribute the damage to a direct cause by motorized users.
- Spotted owl PACs have been appropriately protected in the Proposed Action by seasonal closures.
- The petition misrepresents the threat to Jemez Mountains Salamander (JMS) associated with the Proposed Action or the current level of motorized use activity. The Cooperative Management Plan for the Jemez Mountains Salamander on Lands Administered by the Forest Service (January 2000) sets the framework for protection and management of habitat of the sensitive species. The Plan (p. 4) does not list the activities associated with continued use of existing trails by motorcycles or ATVs as one of the continuing threats; building new trail would be a threat to some individuals associated with the disturbance during construction. A letter from the New Mexico Endemic Salamander Team in February 2008 (before the Proposed Action was finalized) indicated some concern with the scale of motorized use in JMS Essential habitat. For this reason, the Santa Fe National Forest Travel Management Proposed Action for the Jemez District does not designate all existing trails and a large number of existing roads in JMS occupied habitat. Additionally, most existing motorized trails (all but two small connectors <1/2 mi. in length) would be removed from JMS Essential habitat.
- The petition does not qualify as a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. Sec. 553(e). The petition cites 5 U.S.C. Sec. 553(e) as authority for the requested closure orders (petition, p.7 FN 4). Under 5 U.S.C. Sec. 553(e) interested persons may petition for the issuance of a rule, but the statute does not provide for petitions for the issuance of an order. There is a significant difference between a rule and an order under the Administrative Procedures Act and applicable case law. (See the applicable definitions of ‘rule’

and ‘order’ at 5 U.S.C. Sec. 551 for a concise explanation of the difference between a rule and order.) Because the petition has asked for issuance of an order, not a rule, the petition cannot be granted under 5 U.S.C. Sec. 553(e). In addition, there is no procedure in 36 C.F.R. Part 212 or Part 261 for citizen petitions for closure orders.

- The petition describes 118 stream crossings and 4.36 miles of motorized routes adjacent to streams in a relatively small area south of the Valles Caldera National Preserve. It further describes these crossings as more than half of the perennial stream crossings in the entire Santa Fe National Forest. These statistics paint a misleading picture of the number of stream crossings and trails in the Cochiti Mesa area. To be clear, the 118 stream crossings referenced in the petition is a result of a GIS exercise in which the road and trail layer was superimposed on a drainage layer. It is important to understand that many of these routes in the GIS road and trail layers do not exist or are old logging roads that are no longer used. These stream crossings are incorrectly declared to be perennial streams. There are very few perennial streams in the Cochiti Mesa area. In fact, the only perennial stream in the area is in Medio Dia Canyon, and much of this is on private property. The only other nearby perennial stream is Peralta Canyon, which is currently undergoing several watershed restoration improvements. Most of the streams in this area are ephemeral with a few amount of intermittent streams. There is only one current unauthorized route that parallels a perennial stream and this is in upper Medio Dia Canyon. This is an unauthorized trail that crosses through private property and is therefore not in any of the alternatives being analyzed in the Travel Management effort.